

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA

CLIFFORD BAILY, CLIFFORD BLACK,  
WESLEY CALHOUN, CURTIS DEASON,  
RUTH GRAVES, MICKEY GRIZZARD,  
JIMMY PERRY, HERBERT STANLEY SIKES,  
And PHILLIP THOMPSON,

Plaintiffs,

vs.

MERCK & CO., INC., a foreign or  
Domestic Corporation, DAVID SPARKMAN,  
KATHERINE HOLMES, LORI LOVETT,  
SCOTT BARTLETT, CORAL HARPER,  
MELISSA SANTIAGO, HENRY MITCHAM,  
JERRY PHARR, JASON DELK, CHARLES  
HENDERSON, JAMES HOUSTON, JULIE  
MELTON, JULIE HODGES, MELISSA  
BAUER, NATASHA WALKER-MCGLOTHAM)  
RANDY WELLS, and the Defendants A,  
B, C, D, E, X & Z whether singular or  
plural, being those persons, firms or  
entities who or which proximately  
caused or contributed to the Plaintiff's  
and Plaintiff's decedent's other harm  
and the other damages as complained  
of herein whose true names are  
unknown to the Plaintiff but will be  
added by amendment when correctly  
ascertained,

Defendants.

2006 OCT 30 P 3:40

DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

CASE NUMBER: CV-

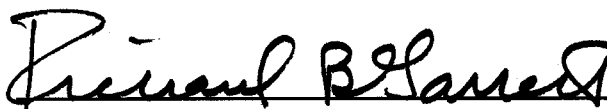
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Removed from the  
Circuit Court of  
Randolph County, Alabama  
(CV-06-145)

MOTION TO DISMISS

Without waiving any other defense he may have to this lawsuit, Defendant **Charles Henderson** moves to dismiss the Plaintiffs' Complaint, under Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief can be granted. In support of

this motion, Henderson states that he has been fraudulently joined to this action, and incorporates the legal arguments, citations, and exhibits in Merck & Co., Inc.'s Notice of Removal.



Richard B. Garrett  
One of the Attorneys for Defendant,  
Merck & Co., Inc.

OF COUNSEL:

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served the above and foregoing document upon all interested parties by placing a copy of same in the United States Mail, postage prepaid and properly addressed on this the 30<sup>th</sup> day of October 2006, as follows:

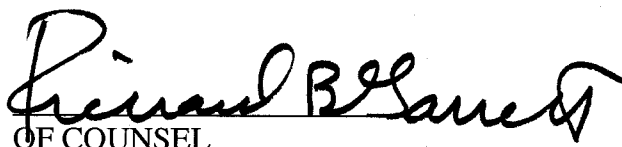
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